

Paper No. 14  
JQ

THIS DISPOSITION IS NOT  
CITABLE AS PRECEDENT OF THE TTAB

AUG. 17, 99

U.S. DEPARTMENT OF COMMERCE  
PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Gregory Speirs

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Serial Nos. 75/201,351 and 75/209,841

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Gregory Speirs, pro se.

Craig D. Taylor, Trademark Examining Attorney, Law Office  
107 (Thomas Lamone, Managing Attorney).

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Before Cissel, Quinn and Walters, Administrative Trademark  
Judges.

Opinion by Quinn, Administrative Trademark Judge:

Applications have been filed by Gregory Speirs to  
register the marks shown below

for "tee shirts, jackets, shorts, boxer shorts, sweatshirts, sweatpants, neckties, tank top shirts, socks [and] sneakers."<sup>1</sup>

The Trademark Examining Attorney has refused registration in each instance under Section 2(d) of the Trademark Act on the ground that applicant's mark, when applied to applicant's goods, so resembles the previously registered mark SKULLYS for "men's hats and caps"<sup>2</sup>, and the previously registered mark shown below

for "coats and jackets"<sup>3</sup> as to be likely to cause confusion. The registrations are owned by two different entities.

When the refusals to register were made final, applicant appealed. Applicant and the Examining Attorney filed briefs. Because of the close similarity of the

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<sup>1</sup> Application Serial No. 75/201,351 for the mark SKULLY (stylized), filed November 21, 1996, alleging a bona fide intention to use the mark in commerce; Application Serial No. 75/209,841 for the mark SKULLY and skeleton design, filed December 9, 1996, alleging dates of first use of January 27, 1993. This application includes a statement that the drawing is lined for the color red.

<sup>2</sup> Registration No. 958,187, issued May 1, 1973; renewed.

<sup>3</sup> Registration No. 1,219,212, issued July 27, 1982 under Section 2(f); combined Sections 8 and 15 affidavit filed.

issues involved in these two appeals, the Board shall explain our decisions in both of these cases with one opinion.

We affirm the refusals to register.

Our determination under Section 2(d) is based on an analysis of all of the probative facts in evidence that are relevant to the factors bearing on the likelihood of confusion issue. In re E. I. du Pont de Nemours & Co., 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods. Federated Food, Inc. v. Fort Howard Paper Co., 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976).

We first turn our attention to the goods. We acknowledge that there is no *per se* rule governing likelihood of confusion in cases involving clothing items. In re British Bulldog, Ltd., 224 USPQ 854 (TTAB 1984). At the same time, it is noted that likelihood of confusion has been found in some cases where the same or similar marks were used by different parties in connection with the types of clothing items involved in this appeal. See, e.g., In re Alfred Dunhill Limited, 224 USPQ 501 (TTAB 1984); and Nina Ricci, S.A.R.L. v. ETF Enterprises, Inc., 203 USPQ 947 (TTAB 1979).

In the present case, we particularly note that the identifications of goods in the involved applications and Registration No. 1,219,212 both include "jackets." Further, notwithstanding the specific differences between the remainder of the goods of applicant and each of the registrants here, we find them to be sufficiently related that, if sold under similar marks, purchasers likely would be confused. All of applicant's and registrants' goods are sold in the same channels of trade to the same classes of purchasers, and all may be purchased in the same shopping trip.

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We now turn to compare applicant's marks with the marks in the cited registrations. With respect to applicant's mark SKULLY (stylized), it is virtually identical to the mark SKULLYS shown in Registration No. 958,187. The facts that the cited mark contains a final letter "s" and that applicant's mark is stylized are not sufficient to distinguish the two marks.

Insofar as the mark SCULLY shown in Registration No. 1,219,212 is concerned, this mark sounds identical to applicant's mark SKULLY, and the marks are similar in appearance.

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As to applicant's SKULLY and skeleton design mark, we likewise find it similar to each of the cited marks. Although the skeleton design is prominently displayed in applicant's mark, the word SKULLY also is a significant feature and one which clearly cannot be ignored when considering the marks in their entireties. The word SKULLY, being the literal portion of applicant's mark, will likely be remembered by consumers and will be used in calling for the goods in the marketplace. This literal portion, as discussed above, is similar to each of the cited marks.

In finding likelihood of confusion in these cases, it must be remembered that the involved goods are of types that may be the subjects of impulse purchases. Moreover, we have kept in mind the normal fallibility of human memory over time and the fact that consumers retain a general rather than a specific impression of trademarks encountered in the marketplace.

The third-party registrations do not compel a different result here. The registrations are not evidence that the marks shown therein are in use or that the public is familiar with them, and the existence on the register of confusingly similar marks cannot aid an applicant in its

effort to register another mark which so resembles a registered mark as to be likely to cause confusion. AMF Inc. v. American Leisure Products, Inc., 474 F.2d 1403, 177 USPQ 268 (CCPA 1973); and Lilly Pulitzer, Inc. v. Lilly Ann Corp., 376 F.2d 324, 153 USPQ 406 (CCPA 1967). It is also noted that none of the third-party registered marks is for either SCULLY or SKULLYS. Further, the coexistence on the register of the cited marks does not compel a different result herein.

Likewise, applicant's alleged ownership of other marks is of no help to him here. Each case must be decided on its own set of facts.

In arguing against the refusals to register, applicant made some remarks (bearing on abandonment and mere descriptiveness) which, as best we can understand them, appear to be collateral attacks on the cited registrations. Suffice it to say that such allegations are improperly raised in the context of this ex parte appeal and, thus, they have not been considered. See: In re Calgon Corp., 435 F.2d 596, 168 USPQ 278, 280 (CCPA 1971); and In re Peebles, Inc., 23 USPQ2d 1795, 1797 n. 5 (TTAB 1992).

Finally, to the extent that any of the points raised by applicant may cast doubt on our ultimate conclusion on the issue of likelihood of confusion, we resolve that

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doubt, as we must, in favor of the prior registrant. In re Martin's Famous Pastry Shoppe, Inc., 748 F.2d 1565, 223 USPQ 1289 (Fed. Cir. 1984); and In re Hyper Shoppes (Ohio), Inc., 837 F.2d 463, 6 USPQ2d 1025 (Fed. Cir. 1988).

Decision: The refusals to register are affirmed.

R. F. Cissel

T. J. Quinn

C. E. Walters  
Administrative Trademark  
Judges, Trademark Trial  
and Appeal Board

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